

Message Text

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PAGE 01 STATE 116993
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TAGS: EAIR, UK

SUBJECT: CIVAIR-US/UK CIVAIR -NEGOTIATIONS-CUSTOMS ARTICLE

REF: LONDON 8346

1. UK REDRAFT OF CUSTOMS ARTICLE SHOWS ONLY SLIGHT MOVE-MENT FROM EARLIER UK STANCE ON CUSTOMS. REDRAFT IS INCON-SISTENT IN SEVERAL RESPECTS WITH U.S. POSITION ON CUSTOMS TO DATE, AND WOULD REQUIRE SIGNIFICANT REVISION TO CONFORM TO CURRENT U.S. REQUIREMENTS. PRINCIPAL DEFECTS OF UK RE-DRAFT ARE OUTLINED BELOW.

2. GROUND EQUIPMENT. LIST OF ITEMS COVERED BY UK EXEMPTION STILL DOES NOT INCLUDE GROUND EQUIPMENT. UK JUSTIFICATION
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 STATE 116993

FOR OMISSION, THAT EEC COMMON CUSTOMS TARIFF MANDATES THIS POSITION, IS CALLED INTO QUESTION BY DATA PROVIDED BY PAN AM INDICATING THAT FRG, BELGIUM, NETHERLANDS AND DENMARK IMPOSE NO DUTY ON IMPORTATION OF GROUND EQUIPMENT, WHILE UK ASSESSMENT IS 27 PERCENT AD VALOREM. GROUND EQUIPMENT EXEMPTION IS REGARDED BY U.S. CARRIERS AS OF CONSIDERABLE IMPORTANCE, AS TURNOVER OF EXPENSIVE AIRCRAFT-SPECIFIC

EQUIPMENT IN COMING YEARS WILL REQUIRE EXTENSIVE IMPORTATION. IMPOSITION OF CUSTOMS DUTIES ON SUCH EQUIPMENT, WHICH OFTEN HAS NO SUBSTITUTE AVAILABLE LOCALLY, WHICH IS IMPORTED AS NECESSARY ASPECT OF CONDUCTING INTERNATIONAL AIR SERVICES PURSUANT TO A BILATERAL AGREEMENT, AND WHICH IS CLEARLY NOT DESTINED FOR RESALE IN UK, SEEMS TO BE AN UNFORTUNATE USE OF CUSTOMS POWER AND INCONSISTENT WITH FACILITATION OF INTERNATIONAL AIR TRANSPORTATION.

3. FYI. ARTICLE 22 OF CHICAGO CONVENTION OBLIGATES UK "TO ADOPT ALL PRACTICABLE MEASURES...TO FACILITATE AND EXPEDITE NAVIGATION BY AIRCRAFT BETWEEN THE TERRITORIES OF CONTRACTING STATES..." ARTICLE 24(B) PROVIDES THAT "SPARE PARTS AND EQUIPMENT IMPORTED INTO THE TERRITORY OF A CONTRACTING STATE FOR INCORPORATION IN OR USE ON AN AIRCRAFT OF ANOTHER CONTRACTING STATE ENGAGED IN INTERNATIONAL AIR NAVIGATION SHALL BE ADMITTED FREE OF CUSTOMS DUTY," SUBJECT TO COMPLIANCE WITH REGULATIONS REQUIRING "CUSTOMS SUPERVISION AND CONTROL." WHILE ELABORATE AIRCRAFT-SPECIFIC GROUND EQUIPMENT WAS NOT NEEDED AND THUS NOT CONTEMPLATED AT TIME OF DRAFTING OF CONVENTION, PROVISIONS REFLECT INTENT TO PREVENT BARRIERS TO AIRLINES' USE OF ORDINARY AND NECESSARY EQUIPMENT IN FORM OF CUSTOMS DUTIES, AND ICAO FACILITATION ANNEX SPECIFICALLY INCLUDES GROUND EQUIPMENT IN LIST OF ITEMS TO RECEIVE CUSTOMS EXEMPTION. IF UK IS ABLE TO SUBSTANTIATE ITS POSITION THAT EEC RULES BIND ITS DISCRETION TO EXEMPT GROUND EQUIPMENT, WE MIGHT PROPOSE BEST EFFORTS COMMITMENT BY UK TO OBTAIN PERMANENT EXEMPTION UNDER EEC REGULATIONS.

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 STATE 116993

4. NON-NATIONAL CHARGES. UK DRAFT OMITS ALL MENTION OF NON-NATIONAL CHARGES AND TAXES. IT IS UNCLEAR WHETHER THIS OMISSION IS BASED ON DECISION THAT SUCH CHARGES AND TAXES WILL LIKELY BE INCONSEQUENTIAL, OR WHETHER ALTERNATIVELY UK WANTS RIGHT TO IMPOSE NON-NATIONAL CHARGES AND TAXES IN RETALIATION FOR U.S. STATE AND LOCAL ASSESSMENTS SUCH AS NEW YORK TAX CURRENTLY IMPOSED ON AIRPORT USE. IN LIGHT OF SUCCESSFUL EFFORTS BY U.S. TO KEEP STATE AND LOCAL TAXATION TO A MINIMUM, AND IN VIEW OF DANGER OF RETALIATORY TAXATION, BEST-EFFORTS APPROACH SHOULD BE PURSUED. CURRENT U.S. DRAFT SPECIFIES RECIPROCAL BASIS FOR BEST-EFFORTS COMMITMENT, SO THAT UK COMMITMENT WOULD BE BASED IN PART ON SUCCESS OF U.S. EFFORT TO MINIMIZE OR ELIMINATE NON-NATIONAL CHARGES. ADVANTAGE OF U.S. PROVISION IS THAT IT IMPLIES PROPORTIONALITY IN DECISION OF RESPECTIVE NATIONAL GOVERNMENTS NOT TO OPPOSE NON-NATIONAL CHARGES.

5. SCOPE OF EXEMPTION. U.S. DRAFT WOULD EXEMPT SPECIFIED

ITEMS WHETHER (L) RETAINED ON AIRCRAFT OF ONE COUNTRY ENTERING THE TERRITORY OF THE OTHER, (2) TAKEN ON BOARD AIRCRAFT IN OTHER COUNTRY'S TERRITORY, OR (3) INTRODUCED INTO OTHER COUNTRY'S TERRITORY FOR USE OF DESIGNATED AIR-LINES. SIGNIFICANTLY, EXCEPT FOR SPARE PARTS, UK DRAFT OMITS THIS THIRD ASPECT OF COVERAGE, AND THUS PRECLUDES ESTABLISHMENT OF RESERVES OF ANY OTHER ITEMS IN TERRITORY OF UK FOR USE ON AGREED SERVICES. MOREOVER, EXCEPT FOR AIRCRAFT STORES AND FUELS AND LUBRICANTS, UK DRAFT OMITS THE SECOND ELEMENT OF COVERAGE AS WELL. CONSUMABLE TECHNICAL SUPPLIES AND REGULAR AIRCRAFT EQUIPMENT OBTAINED IN UK TERRITORY FOR IMMINENT USE IN INTERNATIONAL AIR SERVICES WOULD NOT BE COVERED BY EXEMPTION. UK HAS NOT EXPLAINED REASONS FOR THESE LIMITATIONS ON SCOPE OF EXEMPTION, AND IN ABSENCE OF SATISFACTORY EXPLANATION US FORMULATION SEEMS CLEARLY PREFERABLE.

CONFIDENTIAL

CONFIDENTIAL

PAGE 04 STATE 116993

6. THROUGH-PUT. UK HAS APPARENTLY NOT ACCEPTED US LANGUAGE INCLUDING "THROUGH-PUT AND SIMILAR CHARGES NOT BASED ON THE COST OF SERVICE" AS PART OF EXEMPTION ON FUEL. TAX ON FUEL LIFTED IN UK HAS IN PAST BEEN CATEGORIZED AS SUCH THROUGH-PUT CHARGE, OSTENSIBLY A KIND OF USER CHARGE, AND WHEN CHALLENGED BY US AIRLINES, HAS BEEN LEVIED ON FUEL SUPPLIER AND PASSED ON TO AIRLINE. A SMALLER CHARGE ON FUEL UNRELATED TO SERVICES PROVIDED CONTINUES TO BE IMPOSED ON SUPPLIER AND PASSED ON TO US AIRLINES. IT IS UNCLEAR WHETHER LANGUAGE IN UK REDRAFT PARAGRAPH 2, "WITH THE EXCEPTION OF CHARGES CORRESPONDING TO THE SERVICE PERFORMED," IS ADDRESSED TO THIS ISSUE, AND IF SO, WHETHER IT WOULD PERMIT OR PROHIBIT THE IMPOSITION OF THROUGH-PUT CHARGES. IN ABSENCE OF SATISFACTORY EXPLANATION, US LANGUAGE SHOULD BE RETAINED.

7. THREE ADDITIONAL POINTS ON PARAGRAPH 2: (1) UK EX-EMPTION FOR SPARE PARTS NOW INCLUDES ENGINES; (2) UK WILL APPARENTLY AGREE TO OBJECTIVE RATHER THAN SUBJECTIVE DETERMINATION OF "REASONABLE LIMITS" TO BE APPLIED TO AIR-CRAFT STORES, AS U.S. DRAFT SUGGESTED; (3) UK PARAGRAPH 2(C) FORMERLY SPOKE OF FUEL AND LUBRICANTS SUPPLIED FOR USE IN AN AIRCRAFT, NOW SPEAKS OF FUEL AND LUBRICANTS SUPPLIED TO AN AIRCRAFT. TANKERING OF FUEL BY AIRCRAFT, A PROCESS EMPLOYED TO TRANSFER FUEL TO LOCATIONS WHERE IT IS UNAVAILABLE DUE TO SHORTAGE OR STRIKE OR WHERE ITS COST IS PROHIBITIVE, WOULD ARGUABLY BE PERMITTED UNDER NEW UK LANGUAGE.

8. UK PARAGRAPHS 3 AND 4 ARE ESSENTIALLY REDRAFTS OF U.S. PROVISIONS AND ARE GENERALLY NOT PROBLEMATIC. CHRISTOPHER

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